

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

2. In June of 2000, PATH made a decision to directly vendor the \$500 monthly rent to the landlord based on a finding of money mismanagement by the petitioner. At the time the petitioner was in the midst of eviction proceedings and owed four months' back rent. The landlord agreed to keep the petitioner as a tenant if future rent was vendored or paid directly by the Department to him. He did not seek any of the back rent as a condition to the petitioner's remaining in the trailer. In fact, as the eligibility specialist testified, the petitioner had insufficient funds to pay anything on an

arrearage and keep current with the rent. The eligibility specialist assumed responsibility for sending a portion of the petitioner's ANFC grant directly to her landlord.

3. The petitioner did not appeal that decision. Since that time the Department has paid the petitioner's rent directly every month to the landlord and sent her a check for \$72 per month. The petitioner has gotten behind on other bills due to the vendoring, particularly her electric bill. She gets assistance with her heating through the fuel program and also receives Food Stamps. At the time the rent was vendored the petitioner and the Department hoped she would get a part-time job to help with expenses. The petitioner apparently did get a part-time job but lost it after a couple of months. There was no evidence offered that she has been referred for money management counseling or that she has been told what she needs to do to have the vendors removed.

4. On January 29, 2001, the petitioner asked PATH to stop vendoring her check to the landlord. Her worker indicated that he did not think it was a good idea. He got the impression that the petitioner was planning to use the money to pay other bills and would stop paying the rent. The Department presented no evidence as to what other bills might be unpaid. He stated that vendor payments are routinely

lifted when all back rent is paid up or when a recipient finds new housing she would like to move to. The worker asked his supervisor to review the case. He indicated that he would not agree to lift the vendors under the current circumstances because retaining her housing was too important for the petitioner. PATH asked to delay the hearing to do a more thorough review of the request. The delay was denied because it would mean that the vendoring would continue for at least three more months from the date of her request while it was pending before the Board. Given the fact that the petitioner indicated that she was in economic distress and wanted to move, it seemed unfair to continue the matter. PATH was invited to submit in writing any further formal explanation it wished to offer for its decision to keep the vendors in time for the Board meeting. Nothing further was submitted.

5. The petitioner says she would like to leave the trailer but has not taken any actions to look for another place because she has no security deposit or moving money. She says her relationship with the landlord is unpleasant even though the rent is paid up. She does not think living out in the country is good for her son and, with her car in poor repair, she has trouble getting around. She is thinking about

moving into a motel in town. The petitioner presented at the hearing as tearful, confused and extremely distressed.

ORDER

The decision of the Department is reversed.

REASONS

The regulations governing so-called "protective payments" provide in pertinent part as follows:

Protective payments are management of assistance by a third party outside of the assistance group to meet the needs of a dependent child and the relatives or caretaker with whom the child is living. This is necessary when payment of assistance to the caretaker would be contrary to the welfare of the child. . . .

1. Protective payments are used as a temporary measure when difficulty in money management jeopardizes the welfare of the child and when the caretaker has the capacity to learn to manage his/her funds in a way to assure proper care of the child. This capacity can be presumed unless there is evidence to the contrary.

The benefit is paid to a protective payee who is interested in, or concerned with, the welfare of the family. If an acceptable protective payee cannot be found, a substitute form of protective payment known as controlled vendor payments (CVP) is used (See Procedures Manual Protective Payments).

Families with money management problems, as determined by the department, should be referred to money management counseling, if available in the community.

When mental or physical limitations preclude capacity to improve management of funds, legal alternatives shall be pursued. There must be documentation of inadequate physical capability or of mental incapacity which precludes self-care and concern for family welfare. Petition for appointment of a legal guardian or legal representative for the recipient may be initiated by the department.

W.A.M. 2235

The regulations go on at length to discuss the criteria for determining money mismanagement which includes a "presumption" that a child's health or safety is threatened when the recipient's rent is two or more months in arrears. W.A.M. 2235.1 A.1. This was the criterion originally used to find that the petitioner should have protected payments made on her behalf. The District Director is also required to "evaluate evidence of money mismanagement, determine whether the recipient demonstrates the capacity to overcome these problems, and decided whether or not, based on these facts, a protective payment plan is warranted." Id. In this case, no protective payee was identified in the petitioner's case and she was placed on CVP (controlled vendor payments) with regard to her rent. It also does not appear that any plan was developed to help the petitioner manage her own money. It appears that the "plan" was to pay the petitioner's current rent for the foreseeable future.

The regulations governing the controlled vendor payment system provide, in pertinent part as follows:

The CVP system provides protective payments until a protective payee is appointed. It is used in cases of money mismanagement and sanction. The Eligibility Specialist manages the grant by authorizing payments or vendor authorizations to pay bills and obtain basic needs.

The eligibility specialist cannot spend more than the authorized grant amount, but can spend less and carry an unspent balance forward to a future month as necessary to budget for one-time expenses such as property taxes, mortgage insurance and one-time resolution of a landlord-tenant dispute.

. . .

Any balance remaining in the account when the protective payee is appointed is paid to the payee.

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W.A.M. 2235.4

Pursuant to these regulations, the Eligibility Specialist has been sending \$500 of the petitioner's \$572 per month grant directly to her landlord for seven months. The arrearage was forgiven by the landlord, apparently as a condition of receiving vendored payments. In any event, as the Eligibility Specialist testified, there was no way to make any payment on any arrearage and keep the rent current. There has apparently been no attempt to obtain a protective payee or to obtain financial counseling for the petitioner in the interim.

The regulations make it clear that a person subject to protective payments has a right to appeal to the Human Services Board for a determination that the protective payment should not be continued. W.A.M. 2235.6. The regulations governing "redetermination" of protective payments provide as follows:

Reconsideration of the need for protective payments and the way in which a protective payee's responsibilities are carried out shall be as frequent as indicated by the family's circumstances, as specified in the Procedures Manual, Protective Payments section.

Once a determination of money mismanagement is made, protective payments will continue until the family's essential expenses are current or, in the case of vendor payments made under WAM 2235.1 A 3, at the end of the heating season.

Steps toward judicial appointment of a guardian or other legal representative should be sought (see Procedures Manual P-2230) if, at any time, it appears that the recipient cannot benefit from the protective payee arrangement. Such steps should also be taken if CVP appear likely to continue beyond two years because efforts have not resulted in improved use of assistance on behalf of the family.

W.A.M. 2235.5

The Procedures Manual, which is a directive to workers and not officially promulgated policy, tells the eligibility specialist that recipients should be told how the vendor payments may be removed when they are first put in place. P-2230 B.(2)(c (ii)). The vendor payments are to be reviewed

at each scheduled eligibility review and more frequently if necessary. P-2230 F. Workers are directed at these reviews to evaluate how the recipient is managing non-ANFC cash or other income, refer recipients to money management counselors and to increase the recipient's responsibility for money management, and to end the CVP<sup>1</sup> vendor status "only when essential expenses, including rent, are current." P-2230 G. There are also procedures for diverting rent payments to the eligibility specialist for special handling when a recipient indicates that she is about to move. P-2230 C. 1.

PATH's placement of the petitioner on controlled vendor payments for her rent was certainly a well-meaning and perhaps justified action at the outset to avoid the homelessness of the petitioner's child.<sup>2</sup> However, the regulations set forth above clearly contemplate that vendor payments are a temporary measure to be taken while a plan is put in place and carried out to help the petitioner to become a competent money manager. If the Department believes that the petitioner has no capacity for learning money management, it is required under the above regulations to take legal action to obtain a

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<sup>1</sup> The Procedures Manual uses the term RVP (rent vendor payments) as distinct from CVP payments and treats them somewhat differently in terms of processing. P-2230 A.



court-appointed guardian to act in her behalf. The program does not contemplate the open-ended and indefinite payment of current bills on a recipient's behalf in a paternalistic fashion. Each recipient is supposed to be told at the outset what he or she needs to do to have the vendors ended. Reviews are to be used to insure that the recipient is getting money management assistance and to return more and more responsibility over to the recipient.

The Department has indicated that it does have concerns over the petitioner's capacity to manage her own finances and certainly her demeanor at the hearing justified those concerns. However, the proper course to take if the Department does have such a belief is to seek judicial appointment of a guardian, not to continue to, in effect, act as the petitioner's guardian for the foreseeable future.

The petitioner has never been told what she must do to regain control over her money nor is there any plan in place for helping her to learn money management or to return control of her money to her. Under the regulations and procedures adopted by the Department these are requirements for continuing rent vendor payments. The petitioner has met the

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<sup>2</sup> The original placement of the vendors was not appealed and the merits will not be revisited here.

only criterion set out in the regulations for return of control of her money—a lack of any arrearage in her rent.<sup>3</sup> She has also indicated that in addition to paying her utility bill, she would like to use the money to find another place to live. The latter is another justification for stopping payments directly to the landlord under the Department's procedures. Given all of these facts, PATH's refusal to lift her vendors is untenable. The petitioner is entitled to the relief that she seeks.

It may very well be that the petitioner will cease paying her rent and thereby threaten her child with homelessness in the future. If that occurs PATH has two courses it may take: 1) place her on rent vendors again with a clearly delineated plan for assisting her and returning control of her money to her; or 2) petition for a judicial guardianship over her. Given that the petitioner is clearly living in housing which she cannot afford, an additional immediate course may be available to the Department as well: referring the petitioner to persons who could help her obtain affordable housing and

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<sup>3</sup> Although the petitioner herself indicated that her utility bills might be in arrears, the Department relied only upon her failure to pay the rent last year and its fear that she might take that course in the future as a ground for continuing the vendors.

counseling her on how she might be able to use her benefits to move and pay a new security deposit.

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